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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1110

EASTERN KENTUCKY WELFARE RIGHTS ORGANIZATION, et al.,
Petitioners,

vs.

WILLIAM E. SIMON, SECRETARY OF THE TREASURY, et al.,
Respondents.

IN SUPPORT OF THE PETITIONERS

BRIEF AMICUS CURIAE OF JACKSON COUNTY, MISSOURI

STANLEY CHRISTOPHER
Deputy Counselor
RUSSELL D. JACOBSON
Associate Counselor
Office of County Counselor
701-M Jackson County Courthouse
415 East 12th Street
Kansas City, Missouri 64106
Attorneys for Jackson County, Missouri

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, 421-3030

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CONGRESSIONAL DOCUMENTS

Butler & Schneider, "Analysis of Title II of S. 2513—Proposal for National Health Insurance", in *Hearings on National Health Insurance Before the House Comm. on Ways and Means*, 93d Cong., 2d Sess., Vol. 7 (1974) 13
H.R. Rep. No. 171, Emergency Health Insurance Extension Act of 1975, 94th Cong., 1st Sess. 20 (1975) 13
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BRIEF AMICUS CURIAE OF JACKSON COUNTY, MISSOURI

MOTION OF JACKSON COUNTY, MISSOURI, A POLITICAL SUBDIVISION OF THE STATE OF MISSOURI, FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

Jackson County, Missouri, a first class county having a charter form of government in the State of Missouri, comes now by and through its Office of County Counselor, and respectfully moves for leave to file a brief *amicus curiae* in support of the petitioners in No. 74-1110, *Eastern*

Kentucky Welfare Rights Organization, et al. v. *Simon, et al.*, as provided for in Rule 42 of the Rules of the U.S. Supreme Court, 28 U.S.C. The consent of counsel for petitioners and respondents has been obtained.[1]

INTEREST OF JACKSON COUNTY, MISSOURI

Jackson County, Missouri is, as noted, a political subdivision of the State of Missouri and is an urban county numbering 654,178 persons at the time of the 1970 census. Under Missouri law (Sections 205.580-.760, R.S.Mo.) the County is charged with the duty of care and relief, maintenance and support of the "aged, infirm, lame, blind or sick persons, who are unable to support themselves, and when there are no other persons required by law and able to maintain them. . ." (Section 205.590, R.S.Mo.). Towards this end the County owns and maintains the Jackson County Public Hospital, a 219-bed medical facility located in the rural part of the County, and has under construction the Truman Medical Center, a 308-bed medical facility located in the County's major metropolitan city, Kansas City. These hospitals are largely financed by public revenues and designed to care for the general public including the poor, as defined above, for both emergency and non-emergency in-patient and out-patient medical services.[2]

1. Consent on behalf of petitioners was granted by Marilyn G. Rose, counsel, on July 21, 1975; consent on behalf of respondents was granted by Stewart Smith, Office of Solicitor General, U.S. Department of Justice, on July 21, 1975.

2. At Jackson County Public Hospital in 1973 the mix of patients was 65% totally indigent, 29% partial pay and only 6% full pay. Thus, 94% of the patients received full or partial subsidy of their health care through public revenues. See Transcript at 34, 46-47, *Jackson County Public Hospital* v. *Blue Cross Association*, No. 74-5, Provider Reimbursement Review Board, Dept. of H.E.W., filed Nov. 1974.

In addition to these hospitals there are some thirteen private voluntary hospitals in Jackson County, which are tax-exempt under Missouri law as charitable institutions. The balance of the hospitals in the County are several small proprietary institutions which are not tax-exempt, a community sponsored hospital devoted to child care, a Veterans Administration facility, and a public hospital owned by Kansas City, Missouri.[3]

Recently the question of continuation of the tax-exempt status of three of the thirteen private voluntary hospitals was decided in an action styled *Jackson County* v. *State Tax Commission*, 521 S.W. 2d 378 (Mo. Sup. *en banc* 1975). The Missouri Supreme Court held, in part, that there was substantial and competent evidence in the State Tax Commission record to continue the charitable tax-exempt status based upon meaningful access of the poor to the three hospitals' facilities. A question was also raised in the cause with regard to mere maintenance of a hospital facility as qualification for tax-exempt status ("the promotion of health is itself a charitable purpose" argued counsel for the hospitals),[4] but was not decided by the Court. The decision also noted that the record showed, among other things, the three hospitals were exempt from federal income tax under 26 U.S.C. § 501(c)(3) as charitable corporations, and because of such exemption status contributions to them were deductible by donors for federal income tax purposes under 26 U.S.C. § 170 (*Id.* at 380).

Jackson County continues to sustain an increase in the number of indigent patients requiring both in-patient and

3. It is anticipated that General Hospital, the 224-bed acute care facility maintained by Kansas City, Missouri, will be phased out of existence upon completion of the adjacent Truman Medical Center now being constructed by Jackson County, Missouri.

4. Appendix I.

out-patient hospital care, but there is not a corresponding increase in public hospital facilities to care for these persons.[5] If Revenue Ruling 69-545 is sustained the general effect and impact upon hospitals operated by governmental units such as counties and cities (especially those situated in urban areas) will be an unmanageable increase in the number of patients at such facilities.

A final approval of Revenue Ruling 69-545 will encourage many of the private voluntary hospitals to refuse admission to *any* indigents for in-patient care while still maintaining their federal tax-exempt status merely on the ground that they operate a medical facility. In fact, Jackson County believes there is presently a movement by such private voluntary tax-exempt hospitals to redefine the exemption towards this end.[6]

The consequence of the foregoing will necessarily result in an abnormal increase in admissions to the public

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5. The County's new Truman Medical Center will replace General Hospital, an old and antiquated facility, owned by Kansas City, Missouri. The net increase in availability of acute care beds to the community will only be 84.

6. Actual practices of the private hospitals support this statement. In the *Jackson County* case, *supra*, the hospitals averred that "no one requiring emergency treatment was ever denied it for financial reasons". This assertion was contradicted by conspicuously posted signs in emergency rooms at two of three hospitals whose exempt status was being tested (Appendix II).

With the abandonment of Revenue Ruling 56-185, the private hospitals in Jackson County apparently realized even those continuing requirements as to out-patient emergency care contained in Revenue Ruling 69-545 would not be enforced. Can one imagine that a poor person would voluntarily seek out or present himself for emergency care at a hospital that posted public signs proclaiming its intention *not* to treat him?

The three hospitals involved in the *Jackson County* case aggregate 1,529 beds and during the 5-year period 1968-1972 averaged, on an annual basis, 47,264 patients treated at their emergency rooms (Appendix II). The Jackson County Public Hospital maintains *only* 219 beds, but treated during 1974 over 36,000 emergency and clinic patients.

hospitals, and, in turn, a quantitative increase in indigent patients could result in a drastic diminution of the quality of hospital services by governmental units such as Jackson County. Revenue Ruling 69-545 is especially onerous in that it occurs at this time when the need for hospital care is on the increase, a situation accentuated by such factors as burgeoning numbers of senior citizens in our national populace, increasing longevity of patients, decreased value of fixed incomes and benefits upon which the aged have to rely for their subsistence, and the continuing nationwide inflationary spiral especially as to such basic necessities as medical care.

The obligation of municipalities, counties and states to afford health care is an ever-broadening one, especially in the last few decades, due not only to the increase of the numbers of patients requiring care, but also to increased responsibilities imposed by state legislative enactments and extensions of coverage as the result of judicial decisions (e.g., *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250 (1974)). Public hospital facilities because of lack of funds are generally limited in size and quality, both as to equipment and staff, whereas many private tax-exempt hospitals are enjoying record-breaking fund raising and attendant construction and expansion programs. In marked contrast is the taxpayer resistance to expansion of public facilities, at least where they must be financed (which is usually the case) by increased taxes or bonded indebtedness. Furthermore Jackson County, like many other cities and counties, has experienced an erosion of its *ad valorem* tax base through the exodus to adjacent less urbanized areas by many of its affluent, prosperous residents, as well as commercial and manufacturing enterprises. The exis-

tence of Medicare and Medicaid coverage, while helpful,[7] is insufficient in amount and duration to cover the actual cost of the County's public hospital care,[8] and normally there is no private hospitalization available to the indigent.

Such rulings as Revenue Ruling 69-545 will in many instances be given considerable weight by state and lesser taxing authorities in determining tax-exempt status based upon charitable character.

Because of the County's concern about the continuation of adequate hospital care not only in Jackson County, but in other urban areas where the problem is equally acute, it is urged that the County's views constitute an important source of information with respect to this challenge of Revenue Ruling 69-545's validity. Additionally Jackson County believes if it had been afforded the opportunity to timely present views and information (i.e., from an urban area's standpoint), Revenue Ruling 69-545 might never have been adopted, or, at the minimum, promulgated in a different text and form.

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7. Administration of the Medicare Program, pursuant to 42 U.S.C. § 1395 *et seq.*, has resulted in disparity of treatment as between private and public hospitals. Costs of essential services provided public hospitals by units of government are not recognized for Medicare reimbursement while similar costs of analogous services are allowed for private hospitals. This double standard imposes a discriminatory burden on the local taxpayer who must fund those costs disallowed by the Bureau of Health Insurance, S.S.A., U.S. Department of Health, Education and Welfare. See Appellant's Brief at 4-14, 26-38, *Jackson County Public Hospital v. Blue Cross Association, supra.*

8. During 1970-74 the County appropriated $14,502,000 to the operations of the Jackson County Public Hospital. This represented approximately 10.1% of the County's entire budget for this 5 year period. The annual appropriation increased from $2,275,000 in 1970 to more than $3,737,000 in 1974, an increase of 64%.

SUMMARY OF ARGUMENT

The growth in the need for in-patient hospitalization, as distinguished from emergency room care, for the medically indigent coupled with the abnormal increase in the cost of such care is resulting in an unmanageable number of these patients for the public hospitals. This is further intensified by the reluctance or refusal of the private voluntary hospitals to accept patients who cannot pay in full. No incentive now exists to offset this unfortunate trend in private hospital admittance policies, which results, in part, from implementation of Revenue Ruling 69-545.

The elimination of any condition requiring the private hospital to provide care free or below cost for those unable to pay is of critical importance to the public hospitals which try to absorb increases in usage with institutions which in many instances, are insufficient as to the number of beds, staff, equipment and other facilities. The effect on the indigent is to reduce (perhaps drastically in some areas) both the availability and quality of health care. Furthermore, this is in accord with the trend among the private hospitals toward a general redefinition of the term "charitable" such as would allow them to be relieved of any obligation to the indigent for in-patient care.

The Court of Appeals concluded that governmental units were "increasingly" providing non-emergency care for those unable to pay, but this conclusion in the context in which it was reached is not supported by the record. Contrary to the assumption of the Court of Appeals, some public hospitals have had to close their doors because of cost factors and other problems, while others are experiencing financial difficulties in a time of rapidly increasing medical costs. Many urban areas are realizing a substan-

tial loss to their tax base because of the movement of many tax-paying families and businesses to suburban areas, which either increases the tax burden on those who remain or makes the public hospitals' share of the tax dollar continously diminish.

The adoption of Revenue Ruling 69-545 means that the private hospitals are able to escape the burden of in-patient care for the indigent while realizing avoidance of any part of the burden of taxation to care for this class of persons. This result allows in effect a subsidy for those who can afford medical care at the expense of those who cannot. This subsidy which is made possible by the national government in the name of our entire citizenry, does not benefit the objects of charity—the indigent—but rather those who are not in need of such help.

The adoption of such rulings as 69-545 serves as important criteria for states and their subdivisions in determining local tax exemptions, so if such a ruling is now upheld it will have a continuing adverse result with reference to present and future local determinations.

No notice or comment period was afforded by the Internal Revenue Service when Revenue Ruling 69-545 was adopted. This is required by the Administrative Procedure Act when a new rule having a substantial public impact is enacted. The impact of this ruling upon both the indigent and the public hospitals is of such consequence that public comment should have been heard by the agency. The action of the agency in adopting this ruling also fell within the proscription of the Administrative Procedure Act as arbitrary, capricious or otherwise unlawful because it was not based upon relevant factors such as the increase of indigent patients, costs, inadequacy of public hospitals, and so forth.

ARGUMENT

I

The Issuance of Revenue Ruling 69-545 Was Erroneous Because It Failed to Consider the Impact of Eliminating the Requirement That Hospital Facilities Seeking the Charitable Exemption Provide Free or Below Cost In-Patient Hospital Care to Persons Unable to Pay, Which Ruling Allows the Private Voluntary Hospitals to Now Divert Any or All Medical Indigents to the Public Hospitals, and Such a Change Was Not Warranted by the Findings of the Internal Revenue Service and the Court of Appeals.

The Court of Appeals in upholding the validity of Revenue Ruling 69-545 reasoned in part that the new definition of "charitable" contained therein was valid because "increasingly counties and other political subdivisions are providing non-emergency hospitalization and medical care for those unable to pay" *Eastern Kentucky Welfare Rights Organization* v. *Simon*, 506 F. 2d 1278, 1288-89 (C.A.D.C. 1974).[9] This conclusion while correct in one sense, has a tendency to be misleading in application, when employed to uphold the subject revenue ruling.

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9. A 308-bed hospital owned by Jackson County, to be known as the Truman Medical Center, is under construction and will be completed in mid-1976. Total cost of this facility is estimated to be $34,575,000.00. These funds represent both county bond monies and grants from the U.S. Department of Health, Education and Welfare. This facility will be operated in conjunction with the University of Missouri's medical school in Kansas City. It only represents a net increase of 84 beds in the community as a municipally owned hospital is being closed down. See n. 3, 5.

(A) The Class of Persons Who Qualify As Indigent for Purposes of Medical Care Is on the Increase, and the Court of Appeals Erroneously Assumed That Local Government Is "Increasingly" Providing Care for These Persons Because This Assumption Is Not Supported in Fact, or by the Record.

Jackson County concurs with petitioners' contentions that the Court of Appeals erred in upholding Revenue Ruling 69-545 because it violates the long-established meaning of the charitable exemption under 26 U.S.C. § 501 (c)(3) of the Internal Revenue Code (Petitioners' Brief at 20-28). But more to the specific interest of political subdivisions such as this County (and those similarly situated in urban areas) is the fact that they are faced with an ever increasing number of persons who need in-patient hospitalization and do not have the resources to obtain the same. Jackson County, under Missouri law, has a duty imposed upon it by statute (Chapter 205, R.S.Mo.) to care for such indigents, and for this purpose a multi-purpose public hospital is now maintained by the County.[10] However, the bed space in this institution, as well as the attendant medical staff and facilities is greatly lacking, which is not the case with local private voluntary hospitals. In fact, as noted by the Missouri Supreme Court in the *Jackson County* case, the three private voluntary hospitals involved therein had "turned a profit for several years, i.e., income has exceeded expenses" (521 S.W. 2d at 381).[11]

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10. Jackson County Public Hospital contains 84 acute care, 9 extended care and 126 long term care beds, as well as dental, alcoholism and emergency care clinics.

11. The State Tax Commission concluded that *each* of the three private hospitals whose charitable tax exemption was being challenged by Jackson County (1) had a "wide reputation for excellence in hospital care", (2) provided a "wide range of medical services to patients", (3) offered "certain medical services

(Continued on following page)

Medical studies have noted that urban public hospitals for the poor throughout the United States, "have long faced difficulties in financing, staffing and operations", which arise from a myriad of causes such as history of such indigent care, financing of such hospitals, and political considerations. In addition to the foregoing, another major factor has appeared, namely the rejection or "dumping" of patients considered "undesirable" by private facilities and referral of these patients to the public hospitals. See Roemer & Mera, *Patient Dumping and Other Voluntary Agency Contributions to Public Agency Problems*, 11 Med. Care Rev. 30 (Jan.-Feb. 1973). A principal concern of Jackson County is that the adoption of Revenue Ruling 69-545 will ultimately result in a substantial or total rejection of indigent and otherwise undesirable patients by many local private voluntary hospitals, which, usually are better funded, staffed and equipped to care for such patients than are the public hospitals.

However despite what Jackson County believes to be an existing disparity, at least, in the quality of services between private and public hospitals, some of the tax-exempt private hospitals have even raised (albeit obliquely)

Footnote Continued—

which are unique", (4) employed "over 1,000 persons with an aggregate employee payroll in 1971 ranging from $7.3 million at [one of the hospitals] to $9.7 million at [another of the hospitals]", (5) had a "large medical and surgical staff ranging from 320 physicians and dentists at [one of the hospitals] to 460 at [another of the hospitals]", (6) received in 1971 "revenues . . . from all sources . . . [which] exceeded the amount of its operating expenses" and (7) applied the "excess of hospital revenues over expenses . . . to retirement of debt, expansion and replacement of facilities, or improvement of patient care." These findings of fact were upheld in *Jackson County* v. *State Tax Commission*, *supra*. Th private voluntary hospital with its fine plant and staff is indeed prospering. Debt is being retired, facilities replaced, and quality of care improved, but not to the benefit of the poor or lower income person who has no admittance rights pursuant to Revenue Ruling 69-545.

the contention that the public hospitals rather than the private hospitals should solely care for the indigent. In the *Jackson County* case the private hospitals in their brief to the Missouri Supreme Court took the position that this Court in *Memorial Hospital* v. *Maricopa County, supra,* had "suggested that the burden of indigent care should be assumed by governmental units rather than hospitals, because adding a major item of indigent care to hospitals will result in arbitrarily forcing paying patients to help finance their indigent neighbors. . ." See Appendix III; also *Validity of Revenue Ruling 69-545*, 48 Hospitals 90 (Nov. 16, 1974).

As indicated earlier it is believed that the class of medically indigent continues to grow, both numerically and proportionally.[12] In 1972 it was estimated that a fourth of all Americans were "indigent or at least medically indigent in the presence of substantial health care costs", and that "despite greater coverage of illness and numbers [by voluntary insurance], out of pocket personal health expenses in the most recent ten year period had almost doubled to $23 billions of dollars." See Wolfe, *Health Care for the Poor: When Oh When?*, 62 Am. J. of Pub. Health 1313-1314 (Oct. 1971). More current estimates, which are set forth in the *amicus curiae* brief filed in this cause by the American Public Health Association, indicate that in 1973, before the current rise in unemployment, persons who might be without economic protection against the costs of hospitalization numbered in the neighborhood of 20 to 25 million persons (APHA *Amicus Curiae* Brief at 16, n. 20; also at 21, n. 38, 39), and many of those with hospitalization insurance maintained coverage inadequate to protect them from the rising costs of hospitalization.

12. In 1973 the Jackson County Public Hospital provided approximately 32,000 persons with in-patient and out-patient care. In 1974 more than 39,000 patients were treated (36,222 out-patient emergency and clinic; 2,803 in-patient).

Nor have Medicaid or similar programs solved the protection problem for in 1974 a large number of low income families were estimated to be excluded from such coverage. See Mueller, *Private Health Insurance in 1973*, 38 Social Security Bull. 21, 22 (Feb. 1975); Butler & Schneider, "Analysis of Title II of S. 2513—Proposal for National Health Insurance," in *Hearings on National Health Insurance before the House Comm. on Ways and Means*, 93d Cong., 2d Sess., Vol. 7, at 3116-18 (1974). Of course, with the increase in unemployment (obviously most critical in the urban areas), a factor which may persist despite substantial economic recovery, there will frequently be occasions on which loss of health insurance coverage will entail for the worker and his or her family. See H.R. Rep. No. 171, Emergency Heath Insurance Extension Act of 1975, 94th Cong., 1st Sess. 20 (1975). When such factors are combined with what this Court has recently termed the "astronomical costs of hospitalization" (*Memorial Hospital* v. *Maricopa County*, 415 U.S. at 265), the limits of the public hospitals will soon be over-taxed, if that point has not already been reached, especially if the private voluntary hospitals are allowed tax-exemption without any in-patient requirement to care for the medically indigent.

The ranks of the medically indigent are also enlarged by virtue of the extension of human longevity coupled with the fact that many of these persons have limited fixed incomes (incomes which are without any regular or adequate cost of living increase mechanisms).

In the face of these problems many governmental units such as Jackson County are hard pressed if not unable to cope with further cost increases. The *amicus curiae* brief of the American Public Health Association noted the

closings of some California public county hospitals because of financial difficulties as well as the additional overcrowding and deterioration of public facilities when indigents are diverted from the tax-exempt private institutions to the public hospitals (APHA *Amicus Curiae* Brief at 27-28). Also see Roemer & Mera, *supra,* and *Doctors Ask: Is this Equal Care?*, 11 Medical World News 17-18 (January 30, 1970).

The U.S. Senate Committee on Labor and Welfare has noted in support of an effort to assist the public urban hospitals "that as a class, large urban hospitals are in greatest need of modernization and have the fewest sources of funds . . . to undertake such needed updating and upgrading of facilities." See S. Rep. No. 1285, 93d Cong., 2d Sess., 4 U.S. Code Cong. Admin. News 7842, 7898 (1975). Political subdivisions are faced with growing competition among all of their vital services (including such responsibilities as public safety, juvenile institutions, roads, welfare, parks, as well as health care) for their shares of the local public revenues, which further exacerbates the problem. This County like many other urban counties has experienced a steady eroding of its tax base by the movement of many of its tax-paying families and enterprises to neighboring counties, both in Missouri and Kansas, without a corresponding influx of same, thereby creating a long range impairment of sources of local revenue.[13]

In this context, Jackson County believes Revenue Ruling 69-545 represents an open invitation to the private

13. This problem is heightened by the fact that thirteen large private hospitals, located within Jackson County and aggregating more than $106 million in appraised valuations, are exempt from *ad valorem* taxes despite full use and enjoyment of the benefits and services of local government. In March, 1975, tax assessments in excess of $32,000,000 were stricken from the tax rolls of the Division of Assessment pursuant to the Missouri Supreme Court's decision in the *Jackson County* case, *supra.*

hospital to reject any or most in-patient care for the medically indigent and thereby transfer these persons to the public hospital. Evidence of this attitude is suggested by comments on the subject Court of Appeals' decision which were contained in the *Journal of the American Hospital Association.* Noting that Revenue Ruling 69-545 was an alternate to Revenue Ruling 56-185, which carried "with it an obligation of charity service", the *Journal* quoted an American Hospital Association spokesman as saying "that the decision should remove delays in tax exemption determinations that have been experienced recently by some hospitals," *Validity of Revenue Ruling 69-545,* 48 Hospitals 90 (Nov. 16, 1974). As previously indicated there was analogous contention by the hospitals made to the Missouri Supreme Court in the *Jackson County* case, though the issue was not decided. See Appendix I.

(B) The Elimination of the Requirement to Furnish In-Patient Hospital Care Allows the Tax-Exempt Private Hospitals (and the Patients Therein Who Are Capable of Paying for Their Care) to Enjoy the Benefits Provided by Tax Revenues, While Avoiding Any Tax Liability; and Revenue Ruling 69-545 Thereby Discriminates Against Both the Indigent and the General Public.

Generally the grant of a charitable exemption requires that the asserted charitable use be such that a burden or public function is discharged which would otherwise fall upon government. See 84 C.J.S., *Taxation,* Sec. 297. Yet the effect of Revenue Ruling 69-545 is directly to the contrary because it removes an important responsibility from the private hospital to furnish care for the indigent, and shifts the totality of this burden to the public hospitals. Unfortunately, in actual practice the ruling also relieves

the private hospitals of any liability to pay federal taxes, part of which would ultimately help fund public hospitals by way of such devices as grants-in-aid, Medicare or Medicaid reimbursements, or matching funds; and thus the ruling eliminates, for all intents and purposes, any private hospital obligation to share the in-patient problems of the medically indigent.

In a very real sense Revenue Ruling 69-545 has a self-defeating character through the removal of any incentive or requirement in its application. And, as a direct result, there is a subsidization of the private hospital industry by the taxpayers, which constitutes a windfall to the affluent, compounded by the industry's denial of benefits to the economically disadvantaged.

If the private hospitals paid taxes and thereby shared in the burden of providing health care to the poor through the publicly financed hospitals, then their exclusionary policies as to indigents might have some logical basis. In the present circumstance, however, having taken advantage of the tax laws to escape liability, and thereby avoiding any part of the burden of financing public facilities, the private hospitals' non-accessibility to the poor frustrates the basic reason underlying the grant of exemption.

Jackson County therefore contends that adoption of Revenue Ruling 69-545 (which contains no requirement that a hospital facility affirmatively demonstrate that it accepts and cares for in-patient medically indigent) discriminatorily shifts the burden for indigent health care to the public hospitals. In Jackson County, the federal tax exemption provides private hospitals (and their affluent or insured patients) with a form of national subsidization at the expense of the property tax burden borne by Jackson Countians in order to treat the poor of this community who

remain invisible to, or may have been denied care by the local exempted institutions.[14]

Public hospitals are not in a position to handle this misplaced burden due to the financial and political factors which impinge upon them. The ultimate result will be to deprive the indigent of the availability of quality hospital services while subsidizing such care for the affluent already capable of paying for same.

II

The Adoption of Revenue Ruling 69-545 Would Have an Adverse Effect Upon Tax Exempt Determinations by States Such As Missouri, Which Rely Upon Such Criteria, in Part, When Making Determinations As to Charitable Exemption From Taxation.

Revenue Ruling 69-545 is important from Jackson County's standpoint because such ruling plays a significant role as criteria in determining the tax-exempt charitable status of the private voluntary hospitals in Missouri.[15]

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14. The private hospitals do not admit that any substantial numbers of persons are "medically indigent". In the *Jackson County* case, *supra*, it was urged that there is no such "equation that the poor equal the medically indigent". In fact, statistics were cited to the Missouri Supreme Court to the effect only "3.43 percent of the civilian resident population" were "medically indigent persons". (Although, even the private hospitals noted that this "3.43 percent" numbered 6,892,000 men, women and children.) See Appendix IV.

The possibility must be considered therefore that the indigent are *invisible* to the private hospitals if they sincerely believe the poor do not exist in significant numbers. And, if the "medically indigent" *only* number 6,892,000 persons, are not the health care needs of each of these, as well as the magnitude of such total figure, important and socially significant?

15. Counsel for hospitals seeking tax exemption in Missouri cite federal tax exemption to Missouri courts to support and justify, in part, the hospitals' claims regarding their alleged charitable purposes. See Appendix V.

In 1972 when the status of three of the largest and most profitable private voluntary hospitals within this County was initially considered by the State Tax Commission, one of the findings of fact cited to support a ruling that the hospitals were "charitable" (and therefore exempt) was that each hospital had received a determination from the Internal Revenue Service that it was exempt from federal income tax as an organization described in 26 U.S.C. § 501(c)(3), and that contributions to each hospital were to be deductible for federal income tax purposes under 26 U.S.C. § 170. The Commission also found that each hospital accepted and admitted indigent patients. These findings were recited by the Missouri Supreme Court in its review of the Commission's holding. See *Jackson County* v. *State Tax Commission*, 521 S.W. 2d at 380.

Missouri courts have on other occasions held that determinations by other taxing authorities have a bearing upon similar determinations on the state level in considering tax exempt status. In *Northeast Osteopathic Hospital* v. *Keitel*, 355 Mo. 740, 197 S.W. 2d 970, 974 (1947), it was held where federal taxing agencies have administratively determined a hospital to be exempt from taxation on charitable grounds that if such exemption was determined upon the same, or, in effect, like language in underlying legislation of like purpose then such a determination is persuasive.

If the criteria set forth in Revenue Ruling 69-545 continue to be implemented, then such will have a substantial influence on the determinations by the various states and subdivisions thereof as to tax exempt status of hospitals on charitable grounds. The thrust and impact of this ruling inevitably encourages a redefinition which Jackson County maintains will result in the shedding by the private hospitals of *any* liability for the care of the poor and economically disadvantaged. The private hospitals will

exclusively serve the affluent and the fully insured while enjoying the subsidy of tax exemption authorized by the federal government on behalf of all citizens—both affluent and indigent.

III

The Substantial Impact of the Changes Made by Revenue Ruling 69-545 Required Compliance by the Internal Revenue Service With the Administrative Procedure Act As to Notice and Comment Period, and the Ruling Is Further Unlawful, Under the Administrative Procedure Act, Because Such Is Not Supported by Relevant Information in the Record.

The elimination in Revenue Ruling 69-545 of the requirement that free or below cost care (including in-patient hospitalization) be provided those who are unable to pay as a condition for charitable exemption from federal taxation has a basic and substantial impact upon the medically indigent, as well as on the public hospitals. In such a case the rule-making procedures of the Administrative Procedure Act (5 U.S.C. § 551 *et seq.*) should have been strictly adhered to; i.e., notice in the Federal Register and allowance of a period for comment by interested members of the public was mandatory (5 U.S.C. § 553 [b], [c] and [d]).

A failure to follow proper procedures denied the public any expression of their views on the proposed rule, and eliminated an educational process required of the agency under the Administrative Procedure Act's guidelines for enactment of rules having substantial impact. Indeed, neglect by an agency to afford proper notice and period for comment will invalidate a rule. *Texaco* v. *Federal Power Commission*, 412 F. 2d 740, 743-745 (C.A. 3, 1969); *Lewis-Mota* v. *Secretary of Labor*, 469 F. 2d 478, 481-482 (C.A. 2, 1972). Also see *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759, 764-765 (1969).

Furthermore in implementing a significant change relating to indigent health care the Internal Revenue Service appears to have excluded any consideration of the effect upon the public hospitals (and, consequently, upon the availability and quality of health care delivered to indigents). This is exactly the type of arbitrary capricious or otherwise unlawful action proscribed by 5 U.S.C. § 706 (2) (A).

A government official or agency, in the decision making process, must make judgments upon fair consideration of all the relevant factors, and a failure to do so is violative of 5 U.S.C. § 706(2) (A). See *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 416 (1971). Therefore, Jackson County urges Revenue Ruling 69-545 be set aside for non-compliance by the Internal Service with the Administrative Procedure Act's requirements.

CONCLUSION

For the reasons stated above, this Court should rereverse the judgment of the Court of Appeals and remand this cause to the District Court.

Respectfully submitted,

STANLEY CHRISTOPHER
Deputy Counselor

RUSSELL D. JACOBSON
Associate Counselor
Office of County Counselor
701-M Jackson County Courthouse
415 East 12th Street
Kansas City, Missouri 64106

Attorneys for Jackson County, Missouri

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APPENDIX I

B. The Promotion of Health Is Itself a Charitable Purpose.

The author of the most frequently cited treatise on the law of trusts states the proposition simply: "It is well settled that the promotion of health is a charitable purpose." *Scott on Trusts*, 3rd ed., Sec. 368, p. 2853. With equal clarity other treatise writers[6] and the Restatement of Trusts[7] recognize the promotion of health as a charitable purpose. Those authorities support the rule with abundant case citations.

A thorough discussion of the definitions of "charitable" in Missouri law is contained in Judge Otis' opinion in *Irwin* v. *Swinney*, 44 F.2d 172 (D.C.Mo. 1930). In that case the Court recognized hospitals as charitable *per se*, since they serve the sick, stating:

> "The words 'hospital,' 'infirmary,' 'educational,' 'scientific,' and 'libarary' require no especial discussion, since they are clearly either within the letter of the statute of Elizabeth or 'within its spirit, equity and analogy.' The statute does not mention 'hospitals' and 'infirmaries' by name, but it refers to gifts for the 'relief of aged, impotent, and poor people' and for 'the maintenance of sick and maimed soldiers and mariners.' Certainly 'hospitals' and 'infirmaries' are for these and analogous purposes. Moreover, the Supreme Court of Missouri expressly has held, relying

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6. *Bogert, Trusts and Trustees*, 2d ed., Sec. 374, p. 107; 15 Am. Jur. 2d 156-157.

7. 2 *Restatement of Trusts* 2d, Sec. 372, p. 255.

for precedent upon a case (*Wakering* v. *Bayle*, Proceedings in Chancery, vol. I) anteceding the statute of Elizabeth, that a bequest for the erection of a hospital created a charitable trust. *Buchanan* v. *Kennard*, 234 Mo. 117, 136 S.W. 415, 37 L.R.A. (N.S.) 993, Ann. Cas. 1912D, 50," (at p. 175).

This Court in the *Northeast Osteopathic Hospital* case, supra, confirmed that the relief of suffering and disease is itself charitable, stating:

"'A charity, in the legal sense may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons . . . by relieving their bodies from diseases, suffering or constraint . . .' *State ex rel. Alexian Brothers Hospital* v. *Powers*, 10 Mo. App. 263, aff'd 74 Mo. 476." (197 S.W.2d at 975).

As will be further discussed, on June 10, 1974, Division Number One of this Court decided a sales tax case sustaining the exemtpion of hospital coffee shops, cafeterias and gift shops, a decision premised on the finding that nonprofit hospitals are charitable. *St. John's Medical Center, Inc.* v. *Spradling*, 510 S.W.2d 417 (Mo.Sup. 1974). In that case, the Attorney General, as guardian of public revenues, was seeking additional taxes. His brief concedes, however, that "the providing of health care" is the "charitable function" of hospitals, and that there is no question

about the general "charitable or tax exempt status" of nonprofit, general hospitals (App. Br. 11, 8, 18 in No. 58,191).[8]

Source: Appellants' Brief at 34-36, *Jackson County* v. *State Tax Commission*, 521 S.W.2d 378 (Mo. Sup. en banc 1975).

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". . . other jurisdictions have uniformly rejected the proposition that the test of a charitable hospital turns on the extent of free services rendered."[23]

Source: Appellants' Brief at 44-45, *Jackson County* v. *State Tax Commission, supra.*

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8. See also the recent student note on "Charitable Trusts—Validity of Devises to Unspecified Charities," 39 *Mo. Law Review* 51 (Winter, 1974), where it is again stated that "valid charitable objects include the relief of poverty and the advancement of . . . health . . . or any other purposes that benefit the community." (at 54). As Mr. Justice Blackmun recently observed in *Alexander* v. *"Americans United", Inc.*, ... U.S. ....., 94 S.Ct. 2053, 2065, note 10 (1974) (dissenting on other issues) the legal use of the word "charitable" may have certain "idiosyncrasies." It is a term of art, however, after nearly four centuries of legal interpretation; whatever may be the outer limits of "charitable" activity, in legal usage the term has always included health care as a separate element.

23. "[W]ithout doing any free work of any kind, [a] hospital would still be a charitable corporation so long as its surplus income is applied to the support, maintenance, and enlargement of the hospital and its facilities." *Weiss* v. *Swedish Hospital*, 16 Wash.2d 446, 133 P.2d 978, 980 (1943); see also *In re Henderson's Estate*, op. cit. supra at 608; *Bishop of St. John the Evangelist* v. *Treasurer*, 37 Colo. 378, 86 P. 1021 (1906).

APPENDIX II

". . . no one requiring emergency treatment was ever denied it for financial reasons . . ."

Source: Appellants' Brief at 62, *Jackson County* v. *State Tax Commission, supra.*

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"45. Appellants' glib references to 'no one requiring emergency treatment was ever denied it for financial reasons' and 'utilization of emergency rooms by the poor' contrast sharply with the record which contains no evidence with respect to any actual amounts of free emergency care. These assertions also are contradicted by conspicuously posted signs in emergency rooms at two of the hospitals (September 8, 1974) which state as follows:

At Research (2 signs—one adjacent to only entry to emergency care facility; the other adjacent to desk at which prospective emergency patient is admitted) . . .

'1. This is not a free clinic.

2. Twenty four hour coverage provided by licensed emergency physicians and increased costs of health services make the following minimum charges necessary.

3. Minimum fees are charged *all* patients as follows:

Hospital	$13.00
Physician	$10.00

4. Additional fees may be charged depending on type and extent of services received.

5. Payment in full is requested at time of service.' (Emphasis appears in signs).

At Baptist (1 sign located immediately above area where prospective emergency patient is admitted) . . . 'Cash payment upon dismissal requested for all emergency or out patient services.' "

Source: Respondents' Brief at 75-76, *Jackson County* v. *State Tax Commission, supra.*

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"St. Luke's is the largest hospital in Jackson County with 634 beds in 1972, 30 additional intensive care beds then under construction, a separate School of Nursing and residence quarters, and the Helen F. Spencer Center for Education, used primarily for medical education (St.L.D.R. 103; St.L. Tr. 16, 17). Baptist is a 378 bed hospital and in 1972 had under construction an addition to house its educational programs, a new clinical laboratory and physical therapy facilities (B.D.R. 106-107; B. Tr. 19, 20). Research is a 517 bed hospital with residence structures for student nurses, paramedical students and for certain hospital staff (R.D.R. 99; R. Tr. 9-14)."

Source: Appellants' Brief at 5-6, *Jackson County* v. *State Tax Commission, supra.*

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"The aggregate number of emergency room visits during the past five years for each of the hospitals is as follows:

St. Luke's	75,206
Baptist	77,289
Research	83,829

(St.L.D.R. 125; B.D.R. 123; R.D.R. 119)."

Source: Appellants' Brief at 6-7, *Jackson County* v. *State Tax Commission, supra.*

APPENDIX III

"While the taxing authorities . . . have been casting about for some required percentage of indigent aid, no argument has been made, and it was not suggested by the Court below, that free clinics alone qualify as tax exempt hospitals.[26]"

Source: Appellants' Brief at 46-47, *Jackson County* v. *State Tax Commission, supra.*

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26. "The argument of the quota seekers seems directed toward legislative considerations, and does not seem truly intended to develop judicial interpretations of the existing provisions of law. At the risk of joining issue with the County on a question not properly to be resolved at the judicial level, it may be observed that the United States Supreme Court in an opinion this year has suggested that the burden of indigent care should be assumed by governmental units rather than hospitals, because adding a major item of indigent care to hospital budgets will result in arbitrarily forcing paying patients to help finance their indigent neighbors; and the extra charge on the hospital bills will come at a time when paying patients can perhaps least afford such a burden. *Memorial Hospital* v. *Maricopa County,* ..... U.S. ....., 94 S.Ct. 1076, 1085 (1974)."

APPENDIX IV

"In 1970 less than 4% of the civilian population was both below the poverty level and not covered either by Medicare or Medicaid.[28] Between 1968 and 1973 payments under Medicaid, the largest single program for providing health care to the poor, rose from 13 million recipients to 23.5 million.[29]

It may be concluded that persons of moderate income, not those below the poverty level, are most endangered by medical costs, and these persons do not generally seek to be treated as "objects of charity" in the alms-giving sense. At the end of 1971 the net number of persons under age 65 with some form of private hospital insurance has been estimated at 147 million or 80% of the civilian population.[30] This should not be interpreted, however, as indicating that 80% of health care costs for persons under 65 are insured, since (1) a far smaller percentage of the population has insurance coverage for physicians' expenses and other non-hospital health care costs, and (2) virtually all private hospital insurance imposes limitations, maximums, deductibles, co-insurance requirements and similar provisions which result in the insured shouldering a substantial part of hospital costs. National expenditures for all health care costs totaled $69 billion in 1971, and were paid from the following sources:[31]

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28. Appendix I

29. Appendix II

30. These estimates are Office of Research and Statistics projections published in *Social Security Bulletin,* Feb. 1973, Vol. 36, No. 2, p. 7.

31. Cooper and Worthington, *National Health Expenditures, Calendar Years 1929-71* (Research and Statistics Note No. 3), Office of Research and Statistics, 1973, summarized in *Social Security Bulletin,* Feb. 1973, Vol. 36, No. 2, p. 22."

Private health insurance	25.9%
Out-of-pocket payments by consumers	36.5%
Public funds	36.1%
Philanthropy	1.4%"

Source: Appellants' Brief at 47-48, *Jackson County* v. *State Tax Commission, supra.*

"Appendix I

Health Insurance Coverage of Medically Indigent Persons

	Persons (in thousands)
Persons below poverty level in 1970 (12.6% of population)[1]	25,420
Less: 65 and over presumably eligible for Medicare[2]	(1,188)
Total persons under 65 below poverty level	24,232
Less number of recipients of Medicaid 1970[3]	(17,340)
Total estimated number of medically indigent persons in U.S.A. 1970[4]	6,892
United States civilian resident population April 1, 1970[5]	201,064

1. U.S. Bureau of Census, Department of Commerce, *Current Population Reports*, Series P-60, No. 86.

2. Department of Commerce figures from *A Guide to Consumers Markets*, The Conference Board Report, No. 67, pg. 140.

3. *Numbers of Recipients and Amounts of Payments Under Medicaid* 1970, DHEW Publication Uo. (SRS) 73-03153 NCSS Report B-4 (CY 70) pg. 1.

4. This would be a maximum figure, as it would include eligible persons who did not seek Medicaid assistance.

5. Data are census enumerations as of April 1, 1970; Source: Department of Commerce figures from *A Guide to Consumer Markets*, The Conference Board Report, No. 67, pg. 10.

In 1970, with a civilian resident population of 201,-064,000,[5] there were 25,420,000[1] persons below the Department of Commerce's defined poverty level. Of these persons below the poverty level, 1,188,000[2] were aged 65 or older and presumed eligible for Medicare, resulting in 24,232,000 persons under 65 and below the defined poverty level. These persons under 65 and below the defined poverty level were eligible to receive health care from the Medicaid programs, of which there were 17,340,000 recipients in 1970 according to Department of Health, Education and Welfare.[3] This results in 6,892,000 medically indigent persons, which represents 3.43 percent of the civilian resident population. This means that 96.57 percent of the civilian resident population is *not* medically indigent.

Appendix II

Receipt of Medicaid Benefits

Years	Number of Medicaid Recipients
1968	13,000,000
1969	14,875,000
1970	17,340,000
1971	20,667,000 (est)
1972	22,465,000 (est)
1973	23,500,000 (est)

Source: Number of Recipients and Amounts of Payments Under Medicaid NCSS B-4 NCY-70, Department of HEW Pub # (SRS) 73-03153"

Source: Appellants' Brief at 91-92, *Jackson County* v. *State Tax Commission, supra.*

APPENDIX V

The Circuit Court Erred in Its Interpretation of the Federal Income Tax Law of Charitable Hospitals and the Effect of Such Law on This Case.

Section 501(c)(3) of the Internal Revenue Code (26 U.S.C.) exempts from federal taxation organizations which are organized and operated "exclusively for . . . charitable . . . purposes." Donations to Section 501(c)(3) organizations are deductible for federal income tax purposes.

As stipulated by the parties, St. Luke's, Baptist and Research have each been determined to be tax exempt by the Internal Revenue Service under Section 501(c)(3) (St.L.D.R. 104-105; B.D.R. 108-109; R.D.R. 100-101). We have consistently acknowledged that such determination is not controlling for purposes of tax exemption under Missouri law. Nevertheless, it is highly persuasive and "entitled to respectful consideration." *Northeast Osteopathic Hospital* v. *Keitel*, 355 Mo. 740, 197 S.W.2d 970, 974 (1946).

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The Circuit Court has failed to accord those federal tax exemptions—and the exemptions each hospital enjoys from Missouri State Income Tax and sales and use taxes—the "respectful consideration" which is their due. *Northeast Osteopathic Hospital* v. *Keitel*, supra, 197 S.W.2d at 974. Source: Appellants' Brief at 77, 80, *Jackson County* v. *State Tax Commission, supra.*